COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

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In the Matter of the Arbitration Between:	*	
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CITY OF ATTLEBORO	*	
	*	
-and-	*	ARB-15-4481
	*	
MASSACHUSETTS LABORERS' DISTRICT COUNCIL	*	
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Arbitrator:

Timothy Hatfield, Esq.

Appearances:

Daniel Brown, Esq.	- Representing City of Attleboro
Salvatore Romano	- Representing Massachusetts Laborers' District Council

The parties received a full opportunity to present testimony, exhibits and arguments, and to examine and cross-examine witnesses at a hearing. I have considered the issues, and, having studied and weighed the evidence presented, conclude as follows:

AWARD

The City did not violate the collective bargaining agreement when it gave certain City employees a day off from work due to snow incidents, while at the same time directing bargaining unit employees to operate snow plows. The grievance is denied.

Timothy Hatfield, Esq.
Arbitrator
January 8, 2016

INTRODUCTION

On April 2, 2015, the Massachusetts Laborers' District Council (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L. Chapter 23, Section 9P, the Department of Labor Relations (Department) appointed Timothy Hatfield, Esq. to act as a single neutral arbitrator with the full power of the Department. The undersigned Arbitrator conducted a hearing at the Department's Boston office on October 23, 2015.

The parties orally closed at the conclusion of the hearing.

THE ISSUE

Did the City violate the collective bargaining agreement when it gave certain city employees a day off from work due to snow incidents, while at the same time directing bargaining unit employees to operate snow plows? If so, what shall be the remedy?

RELEVANT CONTRACT LANGUAGE

The parties' Collective Bargaining Agreement (Agreement) contains the following pertinent provisions:

Article II – Management Rights (In Part)

> 3. Both parties recognize that the Mayor and the Department Heads shall at all times retain the right to direct employees, to hire, promote, transfer, assign and retain employees within the department, to suspend, demote, discharge or take other disciplinary action against employees for just cause, to relieve employees from duties because of lack of work or for other legitimate reasons to maintain the efficiency of the operations entrusted to them, to determine the methods, means, and personnel by which such operations are to be conducted, to determine the mission of the City, and the taking of all necessary actions to carry out its mission in emergencies. …

Article IV – Hours of Duty

Section 1 – The administrative workweek for employees covered by this Agreement shall be Sunday through Saturday. The regular workweek for employees in the bargaining unit shall consist of forty (40) hours, scheduled over five (5) consecutive eight (8) hour workdays within said administrative workweek. The starting and ending times of the daily work schedules of said employees shall be determined by the Superintendent. The regular hours of work each day shall be consecutive, except interruptions for lunch periods.

Section 2 – All employees shall have a daily lunch period of one-half (1/2) hour in duration without pay. The lunch period shall not be part of the employee's workday. During snow removal operations and other emergencies when an employee is required to work beyond his regular workday and through any normal meal period or is required to work through any normal meal period on any of his scheduled days off or on a holiday, he will be permitted to take such meal or meals in the manner indicated herein while on duty. If an employee is required to work beyond his regular workday on the first shift, he will be permitted to take his first meal at 6:00 P.M. and will then be permitted to take a meal break every six (6) hours thereafter. If an employee is required to work beyond his regular workday on the second shift, he will be permitted to take his first meal at 2:00 a.m. and will then be permitted to take a meal every six (6) hours thereafter. If an employee is required to work beyond his regular workday on the third shift, he will be permitted to take his first meal at 10:00 a.m. and will then be permitted to take a meal every six (6) hours thereafter. If an employee is required to work in an emergency situation through normal meal periods on his scheduled day off or on a holiday, he will be permitted to take a meal every six (6) hours while on duty. In addition an employee, who because of an emergency situation is required to report for duty at least two (2) hours prior to the beginning of his regular morning tour of duty, shall be permitted to take his breakfast meal while on duty. The City will pay the employee, except as is otherwise provided herein, for the cost of each such meal, whether or not it is actually taken by the employee, in an amount not to exceed ten ($10.00) dollars for all such meals other than the breakfast meal and in an amount not to exceed seven ($7.00) dollars for the breakfast meal. Employees will not be paid for any such meals during those snow removal operations and other emergencies in which the City provides the meals at no cost to the employees.

FACTS

The City of Attleboro (City) and the Union are parties to a collective bargaining agreement that was in effect at all relevant times to this arbitration. The grievant, James Proulx (Proulx/Grievant), works in the City's Department of Public Works (DPW), and is a bargaining unit member. City employees working at City Hall are either non-union employees or employees of a separate bargaining unit of the Attleboro Laborers' Association.

On January 26 and 27, 2015, City Hall was closed due to a snow storm. The City directed all non-essential employees to stay home and paid them for the day. The grievant, as an essential employee of the DPW, was required to report to work and perform his assigned work duties as a snow plow operator. He was compensated as outlined in the DPW collective bargaining agreement.

On February 2, 2015, City Hall was closed for half of the day and non-essential employees were not required to work during the closure and were compensated as if they had worked. The grievant, as an essential employee of the DPW, was required work the full day and perform his assigned work duties as a snow plow operator. He was compensated as outlined in the DPW collective bargaining agreement.

On February 4, 2015, the grievant filed a grievance claiming a violation of Article Four of the collective bargaining agreement via the City's disparate treatment of him in comparison to those employees who worked at City Hall. The grievance was denied at all steps by the City and resulted in the instant arbitration.

POSITIONS OF THE PARTIES

THE UNION

The issue here is not whether DPW employees should be allowed to go home, or stay home during inclement weather, but rather whether DPW employees should receive compensatory time for the hours worked that other employees were allowed to go home, or stay home and be paid. The grievant wants to be treated the same as other City employees who are in the same union local as he is. The controversy arose here because DPW employees were held to a different standard then other City employees.

As a remedy, the grievant is requesting that he receive two and a half compensatory days which equals the time he reported to work to provide his essential services while others were allowed to go home and/or stay home with full pay.

THE EMPLOYER

This grievance concerns a snow plow operator who became disgruntled because he had to plow when other employees got to go home, and/or stay home with pay. It should be first noted that the City employees who were sent, and/or stayed home were members of other bargaining units, or non-union personnel. Because everybody in the grievant's bargaining unit was treated in exactly the same manner as the grievant, there was no disparate treatment. Also, the City did not violate any provisions of the collective bargaining agreement. The Union cannot point to any specific article of the collective bargaining agreement that the City allegedly violated. In fact, the management

rights provision of the collective bargaining agreement allows for the City's actions under the emergency situation provisions of that article.

Finally, as recently as March 2014, the Union attempted to obtain, in contract negotiations, the benefit that its members would earn compensatory leave for time worked when City Hall is closed, but failed to secure the benefit. The Union now seeks to obtain through the grievance and arbitration procedure that which it was unable to obtain through collective bargaining. The City asks that the arbitrator deny the grievance.

OPINION

The issue before me is: Did the City violate the collective bargaining agreement when it gave certain city employees a day off from work due to snow incidents, while at the same time directing bargaining unit employees to operate snow plows? If so, what shall be the remedy?

For all the reasons stated below, the City did not violate the collective bargaining agreement, and the grievance is denied.

In the original grievance that Proulx filed, he cited Article Four of the collective bargaining agreement as the article violated by the City. A plain reading of Article Four, as cited above, clearly and unambiguously demonstrates that the concept of compensatory leave for DPW employees who work while City Hall is closed is not addressed. Additionally, evidence that the City submitted at hearing establishes that the Union was aware that the collective bargaining agreement contained no such language. As recently as March 2014, the Union made a specific proposal to the City during contract negotiations to have DPW

workers earn compensatory leave when City Hall is closed. The Union was unsuccessful in securing this benefit during negotiations and cannot now use the grievance and arbitration procedure to obtain this benefit.

At the arbitration hearing, the Union's argument conceptually moved away from the idea of a specific article of the collective bargaining agreement being violated and moved instead towards an argument centering on disparate treatment. The Union's claim is that the City has treated disparately DPW employees, who are required to work during weather emergencies. The Union argues that because City Hall employees were given time off with pay on three occasions for weather related closures of City Hall, DPW employees should be entitled to compensatory leave. This argument is unpersuasive. First and foremost, none of the employees who were directed to stay home and were subsequently paid are bargaining unit members under the DPW's collective bargaining agreement, and thus were in no manner similarly situated. The City is not required to treat members of different bargaining units similarly in respect to employee benefits. The current employee benefit package in the DPW collective bargaining agreement was collectively bargained by the Union and the City and, as stated above, does not provide for payment of compensatory leave to DPW employees when City Hall is closed. The City is required to adhere to the agreed upon terms of the Union's collective bargaining agreement, nothing more and more importantly, nothing less. The benefits that the City has agreed to provide other employees, both unionized and non-unionized, have no bearing on the benefits to which DPW bargaining unit members are entitled.

For the reasons stated above, I find that the City did not violate the collective bargaining agreement when it gave certain City employees a day off from work due to snow incidents, while at the same time directing bargaining unit employees to operate snow plows. The grievance is denied.

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Timothy Hatfield, Esq.
Arbitrator
January 8, 2016